IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.8.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.467 of 2007

M.Kannammal .. Petitioner

Vs

1. The Commissioner of Police,
   Greater Chennai, Egmore,
   Chennai-8.

2. The Secretary to Government,
   Prohibition and Excise Department,
   Fort St. George,
   Chennai 600009. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.K.Ravichandran
For Respondents: Mr.N.R.Elango
Additional Public Prosecutor

ORDER

(Order of this Court was made by P.D.DINAKARAN,J.)

The petitioner, who is the sister of the detenu, Arumugam, son of Muthu, who was incarcerated by order dated 25.1.2007 of the first respondent under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as a Goonda, has preferred this petition for issue of a Writ of Habeas Corpus to call for the records in connection with the order of detention passed by the first respondent dated 25.1.2007 in Memo.No.25/BDFGISSV/2007 against the petitioner's sister, Arumugam, son of Muthu, now confined at Central Prison, Puzhal, Chennai, to set aside the same and to direct the respondents to produce the above said detenu before this Court and set him at liberty.

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2. The order of detention dated 25.1.2007 came to be passed based on the ground case said to have taken place on 2.1.2007 during morning hours, on the basis of the complaint lodged by one Tharanipathi before the Sub Inspector of Police, T2 Ambattur Estate Police Station. According to the complainant, when he was proceeding in his motor cycle towards Ambattur, two persons came in a motor cycle bearing Regn. No. TN-20-AV-8095 and other two persons came in another motor cycle bearing Regn. No. TN-20-AA-5581, wrongfully restrained him. When he questioned the same, one among them threatened the complainant by showing a knife and took away a sum of Rs.480/- from his pocket and another person snatched his wrist watch and gold ring. One of among them also fisted the complainant. Out of fear, the complainant left his motor cycle at the spot and ran towards bus stand. When the people who were nearby came for his rescue, they were threatened by showing knives. Enquiry revealed that the persons were the detenu herein and three others. In this regard, a case was registered in Crime No.3/2007 on the file of T2 Ambattur Estate Police Station under Sections 341, 336, 427, 397 and 506(ii) IPC.

3. The first respondent, taking note of this case as a ground case and finding that there are two adverse cases pending against the detenu for the offences punishable under Sections 324, 427 and 506(ii) IPC in Crime No.412/2006 and 314, 307 and 302 IPC in Crime No.1/2007 on the file of T-2 Ambattur Police Station, having satisfied that there is a compelling necessity to detain him in order to prevent him from indulging in the activities which are prejudicial to the maintenance of public order, ordered his detention dubbing him as a Goonda.

4. The core contention of the learned counsel for the petitioner is that there was a total non application of mind on the part of the detaining authority. According to the learned counsel, when the alleged ground case was said to have taken place on 2.1.2007 at 9.15 hours at Ambattur, the detenu along with three other accused surrendered before the learned Judicial Magistrate, Tiruttani, on 2.1.2007 at 10.00 a.m., in the case registered in Crime No.1/2007 under Sections 341, 307 and 302 I.P.C. on the file of T2 Ambattur Police Station. The detenu along with three others filed an affidavit to that effect (page 95 of the booklet) and the said Judicial Magistrate passed an order remanding the accused till 12.1.2007 (page 97 of the booklet). If that be so, it is not possible for the detenu to travel by any mode of transportation from Ambattur to Tituttani within 45 minutes and surrender before the Judicial Magistrate, Tiruttani, at 10.00 a.m. on 2.1.2007. Accordingly, the non-application of mind of the detaining authority to the above facts vitiates the order of detention.

5. We have perused the entire materials placed before us and we are satisfied that there is an error apparent on the face of the record, which would go to show that the detaining authority had not applied their mind before passing the order of detention.

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6. In view of the above, the impugned order of detention dated 25.1.2007 is set aside. The detenu is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

ATR

To:

1. The Commissioner of Police,
   Greater Chennai, Egmore,
   Chennai-8.

2. The Secretary to Government,
   State of Tamil Nadu,
   Prohibition & Excise Department,
   Fort St. George,
   Chennai 600009.

3. The Superintendent,
   Central Prison,Puzhal,
   Chennai.

4. The Public Prosecutor,
   High Court, Madras.

5. The Joint Secretary to Government,
   Public (Law and Order)
   Fort St.George, Chennai - 9.

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NG(CO)
RVL 03.09.2007

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